

### **REMARKS**

This response is intended as a full and complete response to the non-final Office Action mailed January 29, 2008. In the Office Action, the Examiner notes that claims 1-19 and 23-53 are pending and rejected. By this response, Applicants have amended claims 1, 33 and 50. Applicants submit that support for the amendments may be found in Applicants' specification on at least page 10, lines 1-5 and page 31, lines 24-28.

In view of the foregoing amendments and the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicants believe that all of these claims are now in allowable form.

### **Rejection under 35 U.S.C. §103 of Claims 1-5 and 30-32**

The Examiner has rejected claims 1-5 and 30-32 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,600,573 to Hendricks et al. (Hendricks) in view of U.S. Patent 5,956,716 to Kenner (Kenner), U.S. Patent No. 5,855,020 to Kirsch (Kirsch), U.S. Patent No. 6,094,680 to Hokanson (Hokanson) and U.S. Patent Publication 2001/0039546 A1 to Moore (Moore). Applicants respectfully traverse the Examiner's rejection.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Hendricks Kenner, Kirsch, Hokanson and Moore, alone or in combination, fail to teach or suggest Applicants' invention as a whole.

Applicants' independent claim 1 recites:

1. A system for finding and retrieving programming from remote sources in a distributed digital communication network, comprising:

an aggregator, wherein said aggregator implements a screening process for limiting a number of programs retrieved to those programs with a viewing audience above a predetermined threshold and those programs that meet a predetermined selection criteria that rejects specific items, comprising:

a request and results processing server, wherein said request and results processing server comprises:

a content search suggestion engine, wherein said content search suggestion engine suggests content based on a user's past search criteria

or previously downloaded content;  
a search engine server coupled to the request and results processing server, wherein the search engine server, comprises:  
a search engine processor;  
a remote content crawler coupled to the search engine processor, wherein the remote content crawler periodically crawls the communications network automatically and retrieves programming information for programs not indexed on the aggregator;  
a search results processor coupled to the search engine processor; and  
a replicated content database; and  
a content acquisition server coupled to the request and results processing server, wherein the request and results processing server receives a request for a program selected from a plurality of programs displayed in a search result display, the search engine server searches the remote sources for the program, and the content acquisition server receives the program from one of the remote sources. (Emphasis added).

Applicants respectfully submit that Hendricks, Kenner, Kirsch, Hokanson and Moore, alone or in any permissible combination, fail to teach or to suggest at least the limitations of “an aggregator, wherein said aggregator implements a screening process for limiting a number of programs retrieved to those programs with a viewing audience above a predetermined threshold and those programs that meet a predetermined selection criteria that rejects specific items, comprising: a request and results processing server, wherein said request and results processing server comprises: a content search suggestion engine, wherein said content search suggestion engine suggests content based on a user’s past search criteria or previously downloaded content” and “wherein the request and results processing server receives a request for a program selected from a plurality of programs displayed in a search result display.”

Hendricks teaches using market research information to aid in packaging programs. (See Hendricks, col. 10, ll. 48-52; col. 17, ll. 18-27). However, Hendricks fails to teach or suggest “wherein the request and results processing server receives a request for a program selected from a plurality of programs displayed in a search result display.” Notably, Hendricks teaches that a video on demand program may be requested. (See Hendricks, col. 19, ll. 46-54). In contrast, the Applicants’ invention teaches that a user may request a program from a list of programs displayed as a search result. Moreover, Kenner, Kirsch, Hokanson and Moore fail to bridge the

substantial gap left by Hendricks.

In addition, Hendricks, Kenner, Kirsch and Moore fail to teach or suggest “an aggregator, wherein said aggregator implements a screening process for limiting a number of programs retrieved to those programs with a viewing audience above a predetermined threshold and those programs that meet a predetermined selection criteria that rejects specific items”. The Examiner concedes this in the office action. However, the Examiner asserts that Hokanson bridges the substantial gap left by Hendricks, Kenner, Kirsch and Moore. The Applicants respectfully disagree.

The amended independent claim 1 recites that the screening process also includes only retrieving those programs that meet a predetermined selection criteria that rejects specific items. For example, the Applicants’ invention may filter out specific content that is undesirable, such as adult content. (See e.g., Applicants’ specification, p. 10, ll. 1-5). In contrast, Hokanson only teaches keeping content available for user downloads based on a cost/demand basis. (See Hokanson, generally). Hokanson is silent as to requiring content to also meet a predetermined selection criteria that rejects specific items. As a result, some items that are undesirable, such as adult content, if popular enough may still be available.

Furthermore, Hendricks, Kenner, Kirsh and Hokanson fail to teach or suggest a content search suggestion engine, wherein said content search suggestion engine suggests content based on a user’s past search criteria or previously downloaded content. The Examiner concedes this in the Office Action. However, the Examiner asserts that Moore bridges the substantial gap left by Hendricks, Kenner, Kirsh and Hokanson. The Applicants respectfully disagree.

Moore teaches a web browser plug having an auto search feature that can follow along with a user’s current search to suggest links that might lead to the desired information. (See Moore, para. [0035]). Notably, Moore utilizes a user’s current search. In stark contrast, the Applicants’ invention utilizes a user’s past search criteria or previously downloaded content. As a result, Moore is limited to providing suggested links to a user’s current search, unlike the Applicants’ invention that may suggest content in addition to and outside of whatever the user may currently be looking for. To illustrate, the Applicants’ invention would allow the content search suggestion engine to

suggest some sports programming that may be of interest to a user based on the user's past search criteria and downloaded content that the user may not be aware of, even though the user may currently be looking for comedy content. In contrast, Moore's auto search feature would be limited to providing suggestions based on the current user search and where the user goes on the web. (See Moore, para. [0035]). Therefore, Moore fails to bridge the substantial gap left by Hendricks, Kenner, Kirsh and Hokanson because Moore also fails to teach or suggest a content search suggestion engine, wherein said content search suggestion engine suggests content based on a user's past search criteria or previously downloaded content.

Thus, Hendricks, Kenner, Kirsch, Hokanson and Moore, alone or in combination, fail to disclose the invention as a whole. As such, Applicants submit that independent claim 1 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Furthermore, claims 2-5 and 30-32 depend directly or indirectly from independent claim 1 and recite additional limitations thereof. As such, and for at least the same reasons as discussed above, Applicants submit that these dependent claims are also not obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

#### **Rejection under 35 U.S.C. §103 of Claims 6-10, 14-19, and 23-29**

The Examiner has rejected claims 6-10, 14-19, and 23-29 under 35 U.S.C. §103(a) as being unpatentable over Hendricks, Kenner, Kirsch, Hokanson and Moore as applied to claim 1 above, and further in view of Cappi. Applicants respectfully traverse the Examiner's rejection and particularly the Examiner's characterization of Cappi.

Claims 6-10, 14-19, and 23-29 depend, directly or indirectly, from independent claim 1 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Hendricks, Kenner, Kirsch, Hokanson and Moore references fail to teach or suggest Applicants' invention as a whole, as recited in claim 1. Accordingly, any attempted combination of the Hendricks, Kenner, Kirsch, Hokanson and Moore references with the Cappi reference, in a rejection against the dependent claims, would

still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claims 6-10, 14-29, and 23-29 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

#### **Rejection under 35 U.S.C. §103 of Claims 11-13**

The Examiner has rejected claims 11-13 under 35 U.S.C. §103(a) as being unpatentable over Hendricks, Kenner, Kirsch, Hokanson, Moore and Cappi as applied to claim 10 above, and further in view of Whitman et al. U.S. Patent 6,772,150 (Whitman) and Grooters U.S. Patent 6,839,705 (Grooters). Applicants respectfully traverse the rejection.

Claims 11-13 depend directly or indirectly from independent claim 1 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Hendricks, Kenner, Kirsch and Cappi references fail to teach or suggest Applicants' invention as a whole, as recited in claim 1. Whitman and Grooters fail to bridge the substantial gap left by Hendricks, Kenner, Kirsch and Cappi. Accordingly, any attempted combination of the Hendricks, Kenner, Kirsch and Cappi references with the Whitman and Grooters references, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claims 11-13 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

#### **Rejection under 35 U.S.C. §103 of Claims 33, 39-44, 46, 47, 50, 51, and 53**

The Examiner has rejected claims 33, 39-44, 46, 47, 50, 51, and 53 under 35 U.S.C. §103(a) as being unpatentable over Kenner in view of Kirsch, Hokanson and Moore. Applicants respectfully traverse the rejection.

Applicants' independent claims 33 and 50 recite:

33. A method using a video and multimedia aggregator for finding and

retrieving program content from remote sources in a distributed digital communication network, comprising:

- receiving a program content search request from a user terminal in the network;
- suggesting additional content via a content search suggestion engine based on a user's past search criteria or previously downloaded content;
- searching a local content database based on the program content search request;
- searching one or more remote content databases based on the program content search request;
- identifying one or more programs based on the searches;
- acquiring one or more of the one or more identified programs from one or more of the local content database and the remote databases if said one or more identified programs has a viewing audience above a predetermined threshold and meets a predetermined selection criteria that rejects specific items;
- periodically crawling the communications network automatically;
- retrieving programming information for programs not indexed on the aggregator;
- displaying said acquired one or more of the one or more identified programs in response to said program content search request;
- receiving a user selection for a program of said acquired one or more of the one or more identified programs; and
- delivering said user selected program to said user terminal. (Emphasis added).

50. A video and multimedia aggregator for use in a distributed digital communication network, comprising:

- means for requesting a search for program content;
- means for suggesting content based on a user's past search criteria or previously downloaded content;
- means for processing the search request;
- means for searching local and remote sources for the program content;
- means for acquiring metadata related to the program content;
- means for displaying the acquired metadata;
- means for receiving a program content download request;
- means for acquiring the program content in the download request if said program content has a viewing audience above a predetermined threshold and meets a predetermined selection criteria that rejects specific items;
- means for displaying the acquired program content at a user terminal;
- means for billing a user of the user terminal;
- means for periodically crawling the communications network automatically, thereby retrieving programming information for programs not indexed on the aggregator;
- means for displaying said acquired one or more of the one or more identified programs in response to said program content search request;

means for receiving a user selection for a program of said acquired one or more of the one or more identified programs; and  
means for delivering said user selected program to said user terminal.  
(Emphasis added).

Applicants respectfully submit that Kenner and Kirsch, alone or in any permissible combination, fail to teach or to suggest at least the limitations of “suggesting additional content via a content search suggestion engine based on a user’s past search criteria or previously downloaded content, acquiring one or more of the one or more identified programs from one or more of the local content database and the remote databases if said one or more identified programs has a viewing audience above a predetermined threshold and meets a predetermined selection criteria that rejects specific items, displaying said acquired one or more of the one or more identified programs in response to said program content search request and receiving a user selection for a program of said acquired one or more of the one or more identified programs.”

Notably, Kenner, Kirsch, Hokanson and Moore fail to teach or suggest displaying said acquired one or more of the one or more identified programs in response to said program content search request and receiving a user selection for a program of said acquired one or more of the one or more identified programs. Moreover, as discussed above, even if Hendricks is applied, Hendricks also fails to teach this limitation because Hendricks teaches that a video on demand program may be requested. (See Hendricks, col. 19, ll. 46-54).

In addition, Kenner, Kirsch and Moore fail to teach or suggest “an aggregator, wherein said aggregator implements a screening process for limiting a number of programs retrieved to those programs with a viewing audience above a predetermined threshold and those programs that meet a predetermined selection criteria that rejects specific items”. The Examiner concedes this in the office action. However, the Examiner asserts that Hokanson bridges the substantial gap left by Kenner, Kirsch and Moore. The Applicants respectfully disagree.

The amended independent claim 1 recites that the screening process also includes only retrieving those programs that meet a predetermined selection criteria that rejects specific items. For example, the Applicants’ invention may filter out specific

content that is undesirable, such as adult content. (See e.g., Applicants' specification, p. 10, ll. 1-5). In contrast, Hokanson only teaches keeping content available for user downloads based on a cost/demand basis. (See Hokanson, generally). Hokanson is silent as to requiring content to also meet a predetermined selection criteria that rejects specific items. As a result, some items that are undesirable, such as adult content, if popular enough may still be available.

Furthermore, Kenner, Kirsh and Hokanson fail to teach or suggest a content search suggestion engine, wherein said content search suggestion engine suggests content based on a user's past search criteria or previously downloaded content. The Examiner concedes this in the Office Action. However, the Examiner asserts that Moore bridges the substantial gap left by Kenner, Kirsh and Hokanson. The Applicants respectfully disagree.

Moore teaches a web browser plug having an auto search feature that can follow along with a user's current search to suggest links that might lead to the desired information. (See Moore, para. [0035]). Notably, Moore utilizes a user's current search. In stark contrast, the Applicants' invention utilizes a user's past search criteria or previously downloaded content. As a result, Moore is limited to providing suggested links to a user's current search, unlike the Applicants' invention that may suggest content in addition to and outside of whatever the user may currently be looking for. To illustrate, the Applicants' invention would allow the content search suggestion engine to suggest some sports programming that may be of interest to a user based on the user's past search criteria and downloaded content that the user may not be aware of, even though the user may currently be looking for comedy content. In contrast, Moore's auto search feature would be limited to providing suggestions based on the current user search and where the user goes on the web. (See Moore, para. [0035]). Therefore, Moore fails to bridge the substantial gap left by Kenner, Kirsh and Hokanson because Moore also fails to teach or suggest a content search suggestion engine, wherein said content search suggestion engine suggests content based on a user's past search criteria or previously downloaded content.

As such, Applicants submit that independent claims 33 and 50 satisfy the requirements of 35 U.S.C. §103 and are patentable Kenner in view of Kirsch, Hokanson



and Moore. Furthermore, claims 39-44, 46, 47, 51, and 53 depend directly or indirectly from independent claims 33 and 50 and recite additional limitations thereof.

Accordingly, for at least the same reasons as discussed above, Applicants submit that these dependent claim fully satisfy the requirements of 35 U.S.C. §103 and are patentable over Kenner in view of Kirsch, Hokanson and Moore. Therefore, the rejection should be withdrawn.

#### **Rejection under 35 U.S.C. §103 of Claims 34-36**

The Examiner has rejected claims 34-36 under 35 U.S.C. §103(a) as being unpatentable over Kenner, Kirsch, Hokanson and Moore as applied to claim 33 above, and further in view of Whitman. Applicants respectfully traverse the rejection.

Claims 34-36 depend directly or indirectly from independent claim 33 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner, Kirsch, Hokanson and Moore references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Whitman fails to bridge the substantial gap left by Kenner, Kirsch, Hokanson and Moore. Accordingly, any attempted combination of the Kenner, Kirsch, Hokanson and Moore references with the Whitman reference, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claims. As such, Applicants submit that dependent claims 34-36 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

#### **Rejection under 35 U.S.C. §103 of Claims 37 and 38**

The Examiner has rejected claims 37 and 38 under 35 U.S.C. §103(a) as being unpatentable over Kenner, Kirsch and Whitman as applied to claim 35 above, and further in view of Nelson et al. U.S. Patent 6,243,713 (Nelson). Applicants respectfully traverse the rejection.

Claims 37 and 38 depend indirectly from independent claim 33 and recite additional limitations thereof. For at least the reasons discussed above, the Kenner, Kirsch, Hokanson and Moore references fail to teach or suggest Applicants' invention

as a whole, as recited in claim 33. Furthermore, the Kenner, Kirsch, Hokanson, Moore and Whitman references fail to teach or suggest Applicants' invention as recited in dependent claim 35. Nelson fails to bridge the substantial gap left by Kenner, Kirsch and Whitman. Accordingly, any attempted combination of the Kenner, Kirsch and Whitman references with Nelson, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claims. As such, Applicants submit that dependent claims 37 and 38 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

#### **Rejection under 35 U.S.C. §103 of Claim 45 and 48**

The Examiner has rejected claim 45 and 48 under 35 U.S.C. §103(a) as being unpatentable over Kenner, Kirsch, Hokanson and Moore as applied to claims 44 and 46 above, and further in view Grooters. Applicants respectfully traverse the rejection.

Claims 45 and 48 depend, directly or indirectly, from independent claim 33 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner, Kirsch, Hokanson and Moore references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Grooters fails to bridge the substantial gap left by Kenner, Kirsch, Hokanson and Moore.

Accordingly, any attempted combination of the Kenner, Kirsch, Hokanson and Moore references with Grooters, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claims. As such, Applicants submit that dependent claims 45 and 48 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

#### **Rejection under 35 U.S.C. §103 of Claims 49 and 52**

The Examiner has rejected claims 49 and 52 under 35 U.S.C. §103(a) as being unpatentable over Kenner, Kirsch, Hokanson and Moore as applied to claim 46 above,

and further in view of Nelson. Applicants respectfully traverse the rejection.

Claims 49 and 52 depend, directly or indirectly, from independent claims 33 and 50 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner, Kirsch, Hokanson and Moore references fail to teach or suggest Applicants' invention as a whole, as recited in claims 33 and 50. Nelson fails to bridge the substantial gap left by Kenner, Kirsch, Hokanson and Moore.

Accordingly, any attempted combination of the Kenner, Kirsch, Hokanson and Moore references with Nelson, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claims. As such, Applicants submit that dependent claims 49 and 52 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that the rejection of such claims under 35 U.S.C. §103(a) be withdrawn.

#### **OFFICIAL NOTICE**

The Examiner responds in the Office Action that Applicants traversals were not adequate. The Applicants respectfully maintain on the record that the Examiner failed to establish proper Official Notice as required under MPEP 2144.03 because the Examiner failed provide supporting evidence for the Examiner's assertion of the various Official Notices in the office action.


**CONCLUSION**

Thus, Applicants submit that all of the claims presently in the application are allowable. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Chin (Jimmy) Kim at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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